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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA, Plaintiff, vs. **TIM BLYTH**, Defendant.	Case 1:13-cr-00002-002 **UNITED STATES' UNOPPOSED MOTION TO DISMISS WITH PREJUDICE**

1   Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, the United States of

2   America hereby moves to dismiss the Indictment in this matter against Defendant Tim Blyth

3   with prejudice.

4   *   *   *

5   "Under Rule 48, courts must grant leave to the government to dismiss an indictment,

6   information, or complaint unless dismissal is 'clearly contrary to manifest public interest.'" *In re*

7   *Ellis*, 356 F.3d 1198, 1209 (9th Cir. 2004) (*en banc*) (quoting *Rinaldi v. United States*, 434 U.S.

1   22, 30 (1977)).

2   The primary intent of the "leave of court" requirement is to protect a defendant against

3   prosecutorial harassment. *See Rinaldi*, 434 U.S. at 29 n. 15; *United States v. Jones*, 664 F.3d

4   966, 973 (5th Cir. 2011). Thus, absent a determination the United States is acting in "bad faith,"

5   the United States' decision to terminate a prosecution should not be judicially disturbed. *See*,

6   *e.g.*, *United States v. Hayden*, 860 F.2d 1483, 1487 (9th Cir. 1988) (district court "properly"

7   grants a Rule 48(a) motion when "unable to find bad faith"); *see also Jones*, 664 F.3d at 973

8   (exercise of prosecutorial discretion to terminate prosecution "should not be judicially disturbed

9   unless 'clearly contrary to manifest public interest'"); *Rice v. Rivera*, 617 F.3d 802, 812 (4th Cir.

10   2010) ("[A] Rule 48 motion that is not motivated by bad faith is not 'clearly contrary to manifest

11   public interest,' and it *must* be granted.") (emphasis in original).

12   As for what constitutes "bad faith," the case-law is sparse. "The disservice to the public

13   interest must be found, if at all, in the motive of the prosecutor [in moving under Rule 48(a)]."

14   *United States v. Smith*, 55 F.3d 157, 159 (4th Cir. 1995). "Examples of disservice to the public

15   interest include the prosecutor's acceptance of a bribe, personal dislike of the victim, and

16   dissatisfaction with the jury impaneled." Moreover, because a "presumption of regularity"

17   attaches to the prosecutorial decisions of the United States, it is the Defendant's burden to prove

18   the United States is acting in bad faith. *United States v. Garcia-Valenzuela*, 232 F.3d 1003, 1007

19   (9th Cir. 2000).

20   "The decision to dismiss an indictment implicates concerns that the Executive is uniquely

21   suited to evaluate, and a district court should be reluctant to deny its request." *Ellis*, 356 F.3d at

22   1210. Additionally, "[c]ourts do not know which charges are best initiated at which time, which

23   allocation of prosecutorial resources is most efficient, or the relative strengths of various cases

24   and charges." *Id*.

1   *   *   *

2   In this case, the United States is not moving to dismiss based on any of the *Smith* factors

3 described above. Rather, this motion is made in good faith, primarily based on the parties'

4 Deferred Prosecution Agreement (*see* Criminal Case No. 1:14-cr-00004, ECF 4) and further

5 discussions that the parties have had following the filing of that document. The United States

6 further offers that counsel for this defendant is aware of this motion and does not oppose it.

7   For these reasons, the United States respectfully seeks leave of the Court to dismiss the

8 Indictment as to the above defendant with prejudice.

       Respectfully submitted on September 10, 2015.

                                ALICIA A.G. LIMTIACO
                                United States Attorney

              By: */s/ Russell H. Lorfing*
                                RUSSELL H. LORFING
                                Assistant United States Attorney